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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 825

315 U.S. 799

Schaaf v. S.

IN THE MATTER

of

THE REORGANIZATION OF THE ELEVENTH WARD BUILDING AND LOAN ASSOCIATION OF NEWARK, NEW JERSEY.

PETITION FOR WRIT OF *CERTIORARI* AND BRIEF IN SUPPORT THEREOF.

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THE REORGANIZATION OF THE ELEVENTH WARD BUILDING AND LOAN ASSOCIATION OF NEWARK, NEW JERSEY.

PETITION FOR WRIT OF *CERTIORARI*.

MAY IT PLEASE THE COURT:

The petition of Helen T. Schaaf, and 89 others* respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

The 90 petitioners (whose names are not set out in full for the sake of brevity) are non-borrowing members of the Eleventh Ward Building and Loan Association of Newark, New Jersey (hereinafter termed the Association), a building and loan association organized and doing business under the laws of New Jersey (R. S. Title 17, Chapter 12). The Association instituted proceedings to reorganize pursuant to R. S. Title 17, Chapter 12, Article 15, as amended by P. L. 1939, Chapter 255 (Appendix, p. 15). The peti-

* The other petitioners are enumerated in the Petition of Appeal filed with the New Jersey Court of Errors and Appeals appearing at page 7 of the Record.

tioners filed dissents from the proposed plan of reorganization (which is hereinafter referred to as the Plan and which appears in full at pp. 70-111 of the Record) in the manner provided by the statute. The petitions of dissent are set out in full on pages 20 and 30 of the Record.

The petitions of dissent were filed on June 18, 1940, and June 19, 1940. The Chancellor filed a memorandum (R., pp. 127-133) on July 8, 1940, adjudging the Plan to be unfair and inequitable.

The Association thereupon applied to the trial court for leave to submit proof on certain issues (R., p. 138). The petitioners thereupon requested leave to submit proofs

(a) that building and loan associations, as presently constituted, are not affected with a public interest because the bulk of the mortgages held by them represent loans to non-members and persons who are only technically members who have no substantial investment interest; because the chief source of fresh funds employed by such associations is derived not from contributions by members, but from loans made from governmental agencies; and

(b) that the statute permitting the reorganization of building and loan associations is not enacted to accomplish a public purpose, but affects private rights and relationships only; and

(c) on the value of the assets which are to be pledged to the R. F. C. to secure the $3,000,000 loan so that it may be determined whether the value of the collateral has any reasonable relation to the amount of the loan, and so that it may be determined whether there is any necessity for the making of such a loan; and

(d) that reorganization of Eleventh Ward Building and Loan Association is not in the public interest be-

> cause the community in which it will operate is adequately served by other institutions affording the same facilities for savings and borrowings, and because on reorganization, there would be no outlet for investment of funds which is consistent with the purposes for which building and loan associations are created.

Leave to submit such proofs was denied to the petitioners on July 24, 1940 (R., p. 140).

Limited proofs sought by the Association were taken *ex parte* (R., pp. 157-187 and R., pp. 218-242). Thereafter the trial court reversed itself and decreed the Plan to be fair and equitable with certain minor modifications (R., pp. 253-255), and again denied the petitioners leave to submit proofs.

The petitioners appealed from this decree to the Court of Errors and Appeals of New Jersey, the highest appellate court in New Jersey, which affirmed the decree below (R., p. 275) by an opinion reported in 130 N. J. Eq. 414.

That court considered and decided adversely to the petitioners the contention that the petitioners were not afforded an opportunity to present evidence, thus denying to the petitioners the due process of law guaranteed by the Fourteenth Amendment of the federal constitution.

The claim of constitutional right to a full hearing on the merits of the case was raised before the Court of Errors and Appeals in the petition of appeal (R., p. 13).

The trial court and the Court of Errors and Appeals considered and decided adversely to the petitioners their contention that that part of the statute and that that part of the Plan which provided for the crediting of the book

value of shares pledged to secure mortgage loans against the principal amount of such loans in reduction thereof, violated the Fourteenth Amendment of the federal constitution.

This point was raised by the petitioners in their petitions of dissent (R., pp. 23 and 31) and was also raised in their petition of appeal (R., p. 9).

B.

Reasons relied upon for the allowance of the writ.

1. The New Jersey Court of Errors and Appeals has decided federal questions of substance in a way probably not in accord with applicable decisions of this Court and has decided those questions in deprivation of petitioners' constitutional rights as follows:

(a) It has decided as against a claim of constitutional right under the Fourteenth Amendment that the petitioners were afforded a hearing within the meaning of the Fourteenth Amendment.

(b) It has decided as against a claim of constitutional right under the Fourteenth Amendment that the police power of the state may be invoked to prefer one class of members in a mutual association above others, in the absence of any show of evidence on the reason or necessity therefor.

C.

Prayer for Writ.

Wherefore, your petitioners respectfully pray that a writ of *certiorari* be issued out of and under the seal of this Honorable Court, directed to the Court of Errors and Appeals of the State of New Jersey, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 239, February Term, 1941, *In the Matter of the Reorganization of the Eleventh Ward Building and Loan Association of Newark, New Jersey;* that said decree of said Court of Errors and Appeals be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem just and proper; and your petitioners will ever pray.

All of which is respectfully submitted this 29th day of December, 1941.

HELEN T. SCHAAF, and 89 others.
Petitioners.

By:

JEROME C. EISENBERG,
Attorney.